

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of

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|--------------------------------------|---|---------------|
| THE PROPOSED MERGER OF THE GREEN |) | |
| HILLS WATER DISTRICT, BLACK MOUNTAIN |) | |
| WATER DISTRICT, CAWOOD WATER |) | CASE NO. 8965 |
| DISTRICT, AND WALLINS CREEK WATER |) | |
| DISTRICT, HARLAN COUNTY, KENTUCKY |) | |

O R D E R


On May 20, 1983, the Commission received a letter from Harlan County Judge/Executive Hugh Hall requesting that a study be conducted with respect to the feasibility of the merger of the Green Hills Water District, Black Mountain Water District, Cawood Water District, and Wallins Creek Water District, Harlan County, Kentucky. Pursuant to KRS 74.360(2), the Commission has prepared a feasibility report regarding a merger (Appendix A).

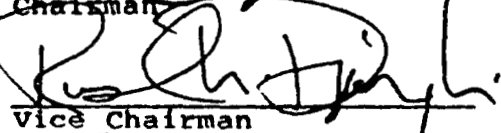
The Commission, having considered the report and being advised, is of the opinion and finds that a merger of the above water districts should be accomplished.

IT IS THEREFORE ORDERED That this matter be and it hereby is set for hearing on the 19th day of April, 1984, at 1:00 p.m., Eastern Standard Time, in the District Courtroom, 2nd Floor, Harlan County Courthouse, Central Street, Harlan, Kentucky, for the purpose of considering the proposed merger.

Done at Frankfort, Kentucky, this 8th day of February, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

R E P O R T

TO: Claude G. Rhorer, Jr., Director
Division of Utility Engineering
and Services

THRU: Byrnes C. Fairchild, Chief Engineer
Water and Sewage Section

FROM: Eddie B. Smith, Public Service Engineer
Water and Sewage Section

DATE: December 15, 1983

SUBJECT: The merger of Harlan County's water districts

OK
RVA for BCF
Eddie B. Smith

INTRODUCTION

On May 20, 1983, the Public Service Commission received a request from Harlan County Judge/Executive Hugh Hall for a study to be conducted into the feasibility of merging Harlan County's water districts. The Public Service Commission is, by KRS 74.361, "authorized and empowered to initiate, carry out, and complete such investigations, inquiries, and studies as may be reasonably necessary to determine the advisability as to the merger of water districts." KRS 74.361 further outlines the procedure to be followed in order to accomplish the merger of water districts (and water associations) by the Public Service Commission. A merger proposed by the Public Service Commission is required to be based on a written report and study. In addition, a formal hearing before the Public Service Commission must be held on the subject of such proposed merger. At the

conclusion of such proceedings the Commission enters an order, either merging the water districts into a single district, or abandoning the merger proposal. This report is the initial step required by KRS 74.361.

EXISTING WATER DISTRICTS

The Green Hills Water District is presently the only fully operational water district in Harlan County. Green Hills was granted approval to establish a water service organization by Public Service Commission Order in case 6458, September 2, 1976. Pursuant to the provisions of KRS 74 the Harlan County Court subsequently established the Green Hills Water District by order dated September 19, 1977. The Harlan County Court order delineated the boundaries for the district as that portion of Harlan County located on the north side of Pine Mountain (See Figure 1 attached). Green Hills was granted a certificate of public convenience and necessity to construct its initial water system by Public Service Commission Order April 14, 1982, in Case 8364. The water system began operations November 16, 1982. The water system was constructed at an original total cost of approximately \$930,000 and consists of an 86,000-gallon-per-day water treatment plant, a 40,000-gallon storage tank, 20,000-gallon storage tank, and some 18 miles of pipelines. Green Hills currently serves 171 customers.

The Cawood Water District states that it was created by order of the Harlan County Court in January 1965 under the provisions of KRS 74. Before 1966 such county court

actions did not require the prior approval of the Public Service Commission. Cawood Water District is located in the south central portion of Harlan County and is centered about the community of Cawood. Other communities within the District's boundaries are Gray's Knob, Chevrolet, Farmers Mill, Lenarue, Mary Helen, Bobs Creek, Little Creek and Crummies along U. S. 421, and Elcomb, Convayor, Teetersville, Mary Alice, Liggett, and Pansy along State Route 72 (See Figure 1 attached). The community of Gray's Knob is currently provided water service by the privately owned Howard Water Company. On September 12, 1983, Cawood Water District received preliminary approval of nearly \$1.5 million in federal funding from the Farmers Home Administration for construction of its water distribution system. The District, which currently does not operate any facilities, plans to begin supplying water service to over 366 customers by 1985. Cawood proposes to construct a 216,000-gallon-per-day water treatment plant, a 200,000-gallon storage tank, and approximately 10 miles of pipelines. The water district has not yet made application to the Public Service Commission for a certificate of public convenience and necessity.

According to its engineering consultant, the Black Mountain Utility District was created by the Harlan County court in August 1980. There is no record that Black Mountain received the approval of the Public Service Commission required by KRS 74 prior to its formation by the Harlan County Court. The district is located in the northeastern part of

Harlan County near the City of Harlan (See Figure 1). The service area boundaries contain most of the valley of the Clover Fork of the Cumberland River. Included in the district are the communities of Coxton, Brookside, Ages, Verda, Kildav, River Ridge, Short Town, Shields, Highsplint, Louella, Closplint, Rileyville, Clover-Darby, Rutherford, Redbud, Kenvir, and several others. Portions of Black Mountain's service area are provided water service by the City of Evarts, the privately owned Coxton Water Works, Inc. at Ages-Brookside, and the privately owned Kenvir Water Works, Inc., at Kenvir. In addition there are several small water systems supplying water to various groups in the area. The Black Mountain Utility District itself does not presently operate any facilities. On September 14, 1982, Black Mountain was granted preliminary approval of a \$150,000 loan from the Farmers Home Administration toward the construction of a proposed \$435,000 project. Black Mountain proposes to purchase the existing Coxton Water System and to also take over operation of the water system serving the Eastbrook Housing Project. The district proposes to initially construct some 4 miles of water lines in order to connect to the Harlan Municipal Water and to provide water service to approximately 140 customers in the Coxton area. No date has yet been set for either commencement or completion of this project. There is also a small federally funded water system proposed for the Louellen community to be operated by Black Mountain.

OTHER WATER SYSTEMS

According to information obtained from the Natural Resources and Environmental Protection Cabinet's Division of Water, 44 public water systems are presently operating in Harlan County (See Appendix A for list). These include the Green Hills Water District, 5 municipal systems (Benham, Cumberland, Evarts, Harlan, and Lynch), 3 privately owned companies under jurisdiction of the Public Service Commission (Coxton Water Works, Howard Water Company, and Kenvir Water Works) and 35 public water systems serving primarily schools and trailer parks. Due to the pollution problems associated with the use of surface streams, the majority of the water systems use wells as the source of their water supply. Usually the water obtained from wells is distributed with little or, in some cases, no treatment. Residents of the area not served by organized systems generally obtain water from a private well, from water that seeps through the sides of a coal mine, or from a spring or creek. Wells in the valley bottoms of Harlan County generally yield water that is soft to moderately hard and that contains noticeable amounts of iron and other minerals. Many wells are contaminated because of the lack of adequate sewage disposal facilities. While exact numbers are not available, it is estimated that less than half of the county's citizens are served by an acceptable public water system, that approximately 10 percent are served through small public and semi-public systems, and that nearly half must rely upon other supplies.

ANALYSIS OF MERGER FEASIBILITY

In 1972, the general assembly of the Commonwealth of Kentucky enacted as a legislative finding of fact that the reduction of the number of operating water districts in the Commonwealth was in the public interest. The legislature further stated that the merger of such districts would tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and would ultimately result in greater economies, less cost, and a higher degree of service to the general public. KRS 74.361 declares that the public policy favors the merger of water districts whenever feasible. This same theme was also expressed by the Cumberland Valley Area Development District in its 1973 Comprehensive Water and Sewer Plan for the region. The 1973 plan recommends that water districts which serve only a small number of people or are of restricted geographical extent not be established in the future. The plan goes on to state that whenever possible, existing water districts should be combined for increased efficiency of operation.

Increased operational efficiency and the elimination of duplication of effort are among the obvious immediate benefits of merging water districts. Merger of Harlan County's water districts would allow consolidation of business activities for all districts in one central location and thus eliminate the need for duplicate facilities, personnel and services. Merger would simplify the accounting activities, operation and work assignment of personnel to the

day-to-day operation of all districts and permit the more efficient use of all personnel. Merger of the districts would require only one annual report to the Public Service Commission and only one periodic audit, thus eliminating duplication of expenditures for accounting services. A merged district would also eliminate the duplication of expense for legal, engineering and other professional services. Of course, a merged district could be managed by a lesser total number of commissioners than the individual districts allowing a possible reduction in total fees and related expenses. Since Harlan County presently has only one water district actually supplying water to customers, the monetary savings of operating a merged district can only be inferred. Green Hills presently employs two people whose annual wages total approximately \$11,400. Cawood proposes to employ three workers at wages totaling \$32,200 a year. Black Mountain also plans to hire three employees for its proposed system at a yearly cost of \$30,000. It is estimated that merger of the water district would allow possible savings in employee wages alone of some \$30,000 a year.

The existing 171 customers of the Green Hills Water District, the 366 customers proposed by Cawood, and the 200 planned for Black Mountain would provide a more substantial customer base for a merged district. The larger cash flow generated by the broadened customer count would afford a measure of financial stability to the operation of the merged system. Such a moderately sized system would be better

capable of meeting requirements for funds to meet the routine minor "emergencies" that plague operating water systems. In addition, a solid financial basis would facilitate the expansion of the district's water system and the extension of service to other areas of Harlan County. Merger of the districts would eventually result in a more uniform rate structure among the various service areas as the total financial structure is realigned between the consolidated districts. Green Hills currently has a minimum monthly bill of \$10.50 for the first 2,000 gallons, Cawood proposes \$13.50 for the first 2,000 gallons, and Black Mountain plans to charge \$11.00 for the first 2,000 gallons.

Merger of Harlan County's water districts would enable more comprehensive planning of water facilities for the benefit of all citizens of the county. One water district with county-wide responsibilities would be better able to develop economic sources and treatment facilities for the county's needs. A single county-wide district could develop the water supply potential of the Martin Fork Reservoir without the jurisdictional restraints that would face a smaller system such as Cawood. A Harlan County Water District could also provide a vehicle for the acquisition and the operation of the many marginal public and semi-public water systems now serving a large number of Harlan County residents.

KRS 74.361 provides that the outstanding obligations of a merged water district which are secured by a pledge of the income of the water system shall continue to be

paid from such moneys until all such obligations have been retired. Green Hills has a series of 5 percent bonds purchased by the Farmers Home Administration totaling \$188,000 which are scheduled to be retired in 2022. Green Hills is current on its repayment obligations with Farmers Home and presently pays \$784 a month interest. It does not appear that the existing bond obligation of Green Hills would present any problem to the formation of a merged district.

OPPOSITION TO MERGER

Robert M. Ireland, associate professor of history at the University of Kentucky, introduces his book Little Kingdoms-The Counties of Kentucky, 1850-1891 with the following statement:

Theoretically only an arm of state government, Kentucky's counties in reality took on characteristics of semi-sovereignties. Once created, they refused to be abolished . . .

Much of Professor Ireland's description of Kentucky's counties can also be applied to its water districts. In October 1983, there were 145 operating water districts in the Commonwealth (along with 35 non-profit water associations) and an unknown number of established but non-operating water districts. In spite of the 1972 legislative mandate there has been an actual increase in the total number of water districts and associations since 1972. In November 1972, there were 138 water districts (and 30 water associations) under Public Service Commission jurisdiction. True there have been a handful of mergers and out-right purchases of districts, but

more districts have also been established. As Professor Ireland would say, "they refused to be abolished."

It would be unreasonable to expect that everyone will favor the merger of Harlan County's water districts. Obviously some of the people with personal or vested interests in the existing districts will be reluctant to accept a change in status. Water district commissioners, employees, engineering consultants, attorneys, accountants, and others involved with the existing districts can be expected to view the formation of a single district with suspicion. Most of these individuals will express public agreement with the legislative finding that merger is in the public interest. Some of them, however, will also present detailed explanations as to why such a merger should be postponed until some future date. It is anticipated that the objections to merger formally raised by such groups or individuals can be adequately addressed by the Public Service Commission's order.

Possibly more critical to the prospect of a successful merger of Harlan County's water districts will be the attitude of the federal funding agencies involved. The federal agency primarily concerned with funding rural water systems is the Farmers Home Administration. Additional funding for specific programs is also available from the Department of Housing and Urban Development and the Appalachian Regional Commission. The Farmers Home Administration funded the construction of Green Hills system with a grant of \$437,800 and a 40 year loan of \$188,000 and

has proposed to partially finance the Cawood and Black Mountain water districts. With such important financial considerations involved, Farmers Home has a substantial interest in any merger of Harlan County's water districts. Federal funding agencies are generally in favor of consolidation of small water systems. However, due to the peculiarities of funding allocation procedures and general bureaucratic inertia, some funding agency personnel can be expected to favor a delay in merging the existing districts.

CONCLUSIONS AND RECOMMENDATIONS

This report concludes, as did the General Assembly in 1972 and the Cumberland Valley Area Development District in 1973, that the merging of water districts is in the public interest. It was also determined that merger of Harlan County's existing districts into a single county-wide water district is both feasible and advisable. A question must be raised as to the exact legal status of the two non-operating water districts, since complete documentation of their formation was not developed during this investigation.

It is anticipated that there will be some local opposition to merger including a request from some parties that merger be delayed until a future date. Never-the-less this report concludes that the three Harlan County Water districts should be merged prior to the construction of any additional major facilities. It is therefore recommended that the Public Service Commission order the immediate merger of the existing Harlan County water districts into one county-wide district.

ADDENDUM TO REPORT

TO: Claude G. Rhorer, Jr., Director *OK*
Division of Utility Engineering
and Services

THRU: Byrnes C. Fairchild, Chief Engineer *BCF*
Water and Sewage Section

FROM: Eddie B. Smith
Public Service Engineer
Water and Sewage Section *Eddie B. Smith*

SUBJECT: The merger of Harlan County's water districts

DATE: January 19, 1984

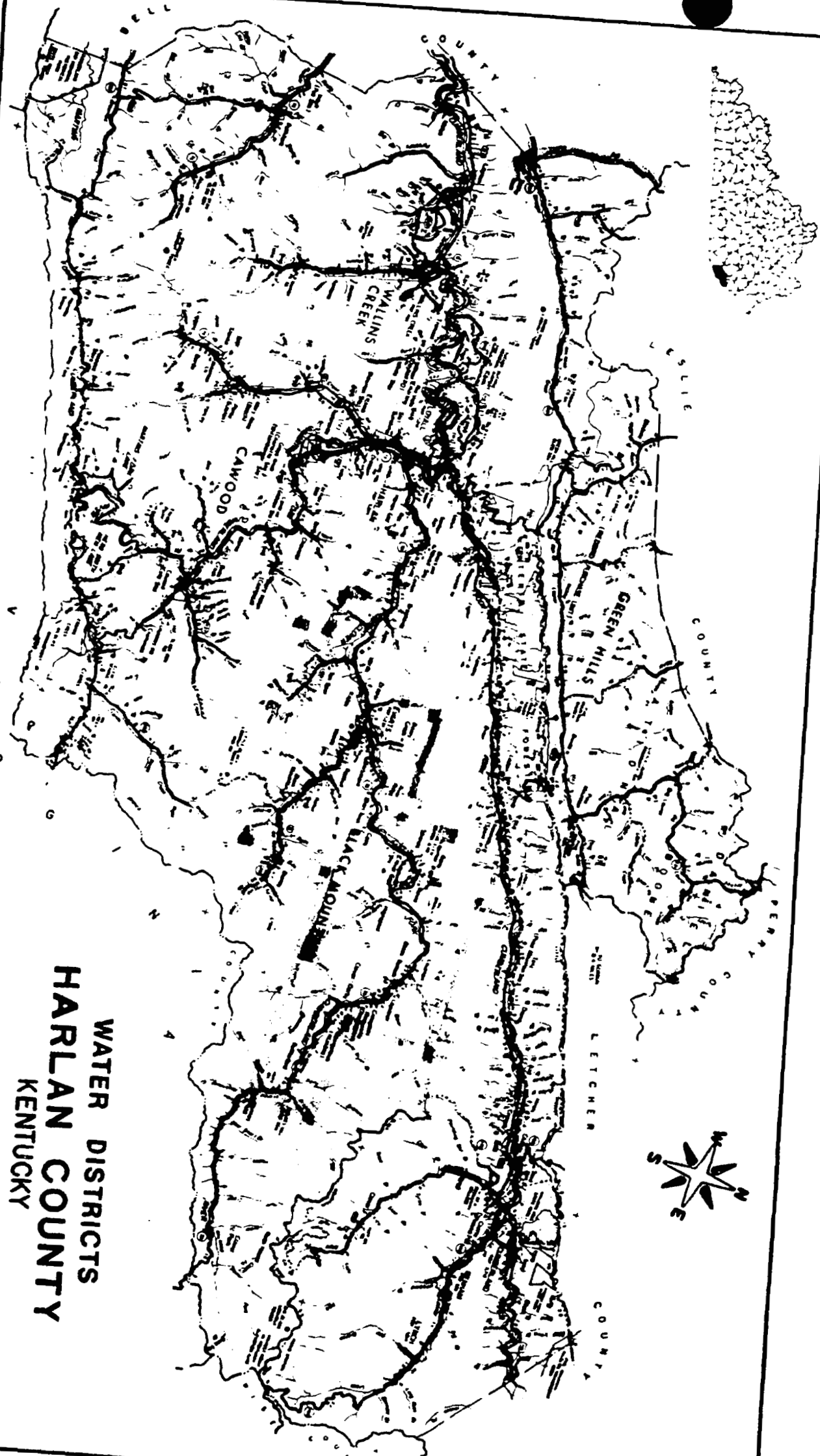
The December 15, 1983, report concerning the merger of Harlan County's water districts listed three water districts for consideration - Green Hills, Black Mountain and Cawood. Since that date additional search of the Public Service Commission's files has produced a record of a Wallins Creek Utilities District created by a Harlan County court order of September 10, 1964. The service area boundaries of this district include the city of Wallins Creek and the communities of Coldiron, Layman, South Wallins, Kentenia, Twila, Creech, Kerr, Longton, Temont, Fresh Meadows, Wilhoit, and White Star (See Figure 1 attached). There is no record of Wallins Creek applying to the Public Service Commission for a certificate of public convenience and necessity to construct a water system. It appears that Wallins Creek never began operations. The exact legal status of the Wallins Creek Utilities District should be determined before a county-wide district is established. The conclusions and recommendations of the December 15, 1983, report are not affected by the discovery of the Wallins Creek Utilities District.

EBS/jsb

APPENDIX A

Public Water Systems in Harlan County

1. Benham Water Plant
2. Coal Resources Corp/Coalgood
3. Coxton Water Works Inc.
4. Cumberland Mun. Water Works
5. Bowman Trailer Home Park
6. Evarts Municipal Water Plant
7. Howard's Water System
8. Harlan Municipal Water Works
9. Kenvir Water Works
10. Kitts Water Supply System
11. Lynch Water Plant
12. Green Hills Water District
13. Chevrolet Water System
14. Coburn Howard Trailer Park
15. Nolan Howard Trailer Park
16. Saylor's Trailer Park
17. Brookside Trailer Park
18. Totz Water System
19. Kentenia Trailer PK
20. Pine Mountain Trailer Park #2
21. Holiday Mobile Home Park
22. Blanton Brothers Trailer Park
23. Mamie Howard Trailer Park
24. Wm. Rogers/Lane Group Site
25. Sids Trailer Park/H U D
26. Verda Elementary School
27. Hall Elementary School
28. Cawood Elementary School
29. Black Mountain Elem. School
30. Wallins Elementary School
31. Elzo Guthrie Elementary School
32. Clover Fork Coal Company
33. Kingdom Come State Park
34. Rosspoint Elem. School
35. Holmes Mill Elem. School
36. Cranks Elem. School
37. Totz School
38. Totz Elem. School
39. Camp O Cumberlands
40. Harlan Drive-In
41. Ages School
42. Shields School
43. Blackstar School
44. Pathfork Headstart



**WATER DISTRICTS
HARLAN COUNTY
KENTUCKY**

Figure 1